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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

SCOTT A. McMILLAN et al.,

Plaintiffs and Appellants,

v.

SCME MORTGAGE BROKERS, INC.,

Defendant and Respondent.

D052572

(Super. Ct. No. GIE023637)

APPEAL from an order of the Superior Court of San Diego County, Laura W. Halgren, Judge. Affirmed.

Scott A. and Rebeca McMillan appeal from an order striking their memorandum of costs in this quiet title action against SCME Mortgage Brokers, Inc. (SCME) and others. They contend that the superior court erred in determining that SCME was the prevailing party, abused its discretion in denying their requested costs and striking their cost memorandum. We find their arguments unavailing and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

The McMillans filed this action against their neighbor, Luis Tejeda, SCME (as Tejeda's mortgagee) and others arising out of a dispute with Tejeda relating to the boundary of their property in El Cajon. In it, they asserted claims for quiet title, ejectment, injunction, trespass, private nuisance and statutory waste; only the quiet title and injunction causes of action were asserted against SCME.

SCME filed a verified answer to the complaint in early 2005, in which it represented that it had assigned its interest in the Tejeda loan to a third party in June 2003 and thus had no existing interest in the property, although it might have some obligation to repurchase the loan in the future (i.e., in the event of a default or fraud by Tejeda). Thereafter, SCME responded to discovery requests propounded upon it by the McMillans, although it did not propound any discovery of its own.

On March 2, 2006, SCME filed a verified disclaimer of any interest in the loan and requested that the action against it be dismissed. As a result, SCME did not participate in the trial on the quiet title cause of action, which took place later that month before Judge Jan Goldsmith. After trial, the court entered an order quieting title to the property in the McMillans' favor against all named defendants.

In November 2006, the McMillans entered into a settlement with Tejeda and the other individual defendants. They dismissed their causes of action for ejectment, encroachment, trespass, nuisance and statutory waste with prejudice and their cause of action for injunctive relief against SCME and the other corporate defendants without prejudice.

The court entered a judgment reciting the foregoing resolution of the McMillans' claims in June 2007. The judgment specified that "[f]ees and costs are to be determined according to California Rules of Court[, rules] 3.1700 and 3.1702 as between [the McMillans] and [SCME]." SCME filed a memorandum of costs on July 26, 2007; approximately a week later, the McMillans filed their own memorandum of costs, seeking to recover \$4,724.38.

Based on the absence of any motion to tax or strike their costs, the McMillans requested that the court enter those costs as part of the judgment. However, upon discovering that the McMillans' cost memorandum was not placed on its attorney's calendar, SCME later obtained relief from Judge Goldsmith allowing it to bring a tardy motion to strike the memorandum. Thereafter, Judge Goldsmith took a leave of absence from the bench and the case was reassigned to Judge Laura Halgren.

Judge Halgren granted SCME's pending motion to strike the McMillans' cost memorandum. She found that SCME's filing of the verified disclaimer of interest was not sufficient to avoid an award of costs against SCME in accordance with Code of Civil Procedure section 761.030, subdivision (b) (all statutory references are to the Code of Civil Procedure), but that since SCME essentially prevailed on the injunction cause of action and the McMillans prevailed on their quiet title cause of action, the case involved a "mixed result" (implicitly finding that neither party was a "prevailing party" in the action) and thus neither was entitled to recover costs. The McMillans appeal.

DISCUSSION

1. *General Principles*

"Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding." (§ 1032, subd. (b); see generally *Santos v. Civil Service Bd.* (1987) 193 Cal.App.3d 1442, 1446 [applying this statute in a proceeding under § 1094.5].) A party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant in an action where neither party obtains any relief, and a defendant as to whom the plaintiff does not recover any relief qualify as prevailing parties entitled to recover costs. (§ 1032, subd. (a)(4).) Moreover, "[w]hen any party recovers other than monetary relief and in situations other than as specified, the 'prevailing party' shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not[.]" (*Ibid.*)

2. *Standard of Review*

We review the superior court's decision not to award costs to either party for an abuse of discretion and will reverse that decision only if it exceeded the bounds of reason. (*Silver v. Boatwright Home Inspection, Inc.* (2002) 97 Cal.App.4th 443, 449.) In this case, the McMillans bear the burden of establishing such an abuse. (*Ibid.*)

3. *Did the Court Abuse its Discretion?*

A. *Prevailing Party Determination*

The McMillans first contend that the court erred in finding that SCME prevailed on their cause of action for injunctive relief, arguing that only a defendant in whose favor

a dismissal of *the entire action* is given qualifies as the prevailing party under section 1032, subdivision (a)(4). This argument, however, mischaracterizes the court's ruling.

The trial court did not declare SCME to be the prevailing party in the entire action, but merely noted that SCME did prevail in the action to the extent that the McMillans dismissed their injunctive relief cause of action. The court's finding that SCME prevailed *in part* in the action established that the second sentence of section 1032, subdivision (a)(4) was applicable, giving the court the discretion to determine whether there was any prevailing party in the action and whether to "allow costs or not" to either party.

Based on the uncontroverted evidence in the record that the McMillans dismissed their claim for injunctive relief against SCME, the court did not abuse its discretion in making this finding.

To the extent that the McMillans suggest that the trial court was not entitled to rely on relevant documents in the existing court file that SCME cited in its points and authorities, but did not file or lodge with its motion, we reject that suggestion. The McMillans' own points and authorities in opposition to the motion to strike requested judicial notice of, and relied on, a number of the same materials that SCME did. Further, they also conceded the underlying factual matters for which those materials were cited.

B. Denial of All of the McMillans' Requested Costs

The McMillans also argue that the court abused its discretion in denying them all of their requested costs against SCME because, although they did not receive a monetary award at trial, they achieved the primary goal of the action, which was to quiet title to their property. This argument fails to establish an abuse of discretion.

There is no question that the extent to which a party has achieved its principal litigation objectives is a factor to be considered by the court in determining whether that party prevailed in the action. (*Wakefield v. Bohlin* (2006) 145 Cal.App.4th 963, 986-987.) However, a review of the McMillans' own complaint establishes that their claim for quiet title was primarily directed at Tejeda, who they alleged had encroached on their property by building a fence on it and damaged their avocado trees; SCME was named as a necessary, but nominal, defendant.

Further, SCME's insignificance as a party to this action is further confirmed by its verified answer and its verified disclaimer of interest, in which SCME represented, under oath, that it had no existing interest in the property. The fact that the McMillans chose to propound extensive discovery on SCME despite its verified responses does not change the fact that SCME was a nominal party and in any event, as the McMillans essentially admit in their opening brief, their \$4,724.38 cost memorandum was for the costs they incurred to succeed on their quiet title cause of action in its entirety.

Under these circumstances, the trial court did not abuse its discretion in denying the McMillans' request to recover costs from SCME.

DISPOSITION

The order is affirmed. SCME is awarded its costs on appeal.

McINTYRE, J.

WE CONCUR:

BENKE, Acting P. J.

HUFFMAN, J.